

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1180 of 1993

WITH

CIVIL REVISION APPLICATION NO.1181/93

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MANIBEN B PRAJAPTI

Versus

GSRTC

Appearance:

MR DF AMIN for Petitioner

MR HEMANT S SHAH for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 16/07/97

25/07/97

ORAL JUDGEMENT

1. The first CRA is directed against the judgment and order below Misc.CA No.408/91 which was filed against MACP No.603/83. The applicant is one Maniben Babulal Prajapati, who has received injuries in a motor accident involving a bus of GSTC. In the vehicular accident which

took place she received injuries for which aforesaid MACP was filed to recover amount of Rs.50,000/-. Accident took place on 14.5.83. Said MACP came to be dismissed on 12.12.1985. for want of prosecution.

2. In another CRA MACP No.552/83 was filed to recover amount of Rs.5,000/- for the injuries sustained by the claimant which came to be dismissed for want of prosecution on 31.8.90.

3. In both the cases MCA for restoration of main MACP along with prayer for condonation of delay in making application and for setting aside abatement if any was filed on 24th July, 1991.

4. It is thus clear that in MACP No.603/83 where claim was for amount of Rs.50,000/-, application for restoration of such petition to file and for condonation of delay was made after expiry of 66 months and 15 days while in the second matter being MACP No.552/83 dismissal for want of prosecution was only in the year 1990 and there was little delay in making application for restoration.

5. The MACT at Broach rejected both MCAs being Nos 408 and 407/91 on the ground that there was no sufficient cause shown for not applying within the period of limitation for setting aside the abatement and for restoring the main petition to file. The court took the view that in the absence of any sufficient cause which is to be shown by the respective applicant, such application can not be entertained and accordingly the tribunal rejected both the applications.

6. Being aggrieved by the aforesaid judgment and order of the tribunal at Broach present two CRAs are filed.

7. Mr.D.F.Amin, Ld.advocate for claimant-petitioners in each CRA has vehemently submitted that in a vehicular accident when the main petition is filed within prescribed period of limitation and if for same reason such petition is dismissed for want of prosecution, the tribunal should adopt lenient approach and should not dismiss the application for want of prosecution especially when the claimants are injured persons who have suffered the injuries in the vehicular accident. On the other hand, Mr.Hemant Shah, Ld.advocate for the STC has submitted that in the matter of this nature where claimants are totally indifferent to prosecute their claim for compensation and when their main petitions for

compensation are dismissed for want of prosecution as back as 1985 and 1990, the MACT was fully justified in not condoning the delay and in not setting aside the abatement and restoring the main petition to file.

8. The factum of motor vehicular accident where the vehicle of the GSTC is involved is not in much dispute because in their petitions filed by other claimants arising from same accident, claim petitions are granted by the tribunal. Unfortunately, for want of prosecution, reason being mainly attributable to the advocate who represented the poor claimants, these two petitions came to be dismissed for want of prosecution. The law on the subject about condonation of delay and as to how the court should deal with the application for condonation of delay and consequent restoration of application to file is laid down by the Apex Court speaking through His Lordship M.P.Thakkar, J in the case COLLECTOR, LAND ACQUISITION, ANANTNAG vs MSY.KATIJI 7 ORS reported in AIR 1987 SC 1353 wherein the court has propounded the following factors which are required to be kept in mind by the court of law while dealing with the application for condonation of delay and setting aside abatement. The principles so propounded are as under:

- "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side can not claim to have vested right in injustice being done because of a nondeliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable

negligence, or on account of malafides. A litigant does not stand to benefit by restoring to delay. In fact, he runs a serious risk.

6. It must be that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to justice."

9. Keeping the aforesaid principles in mind this court has no manner of doubt that the judgment and order passed by the MACT in MCA Nos 408 and 407 of 1991 are required to be quashed and set aside and they are accordingly quashed and set aside and said applications are granted, delay caused in making application for setting aside abatement and restoration application to file is condoned. Both the MACPs being MACP Nos 603 and 552 of 1993 are directed to be restored to file and the tribunal is directed to decide the same preferably by 31st December, 1997. However, since much period is lost in making application for restoration because of some fault on the part of the claimant, the tribunal shall not award full interest for the period during which the applicants remained as dismissed for want of prosecution.

10. Rule is accordingly made absolutely to the aforesaid extent. No costs.